

TASK FORCE ON  
DAY CARE FACILITIES AND SERVICES  
FINAL REPORT

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The Task Force was appointed in September, 1985, "to review current day care regulatory practices and to develop any appropriate recommendations for improving these activities." Members of the Task Force include representatives from the Legislature, State agencies concerned with the provision of out-of-home care for children, providers of care, advocacy groups and parents' organizations.

In addition to hearing reports from State agencies and other Task Force members concerning the strengths and weaknesses of the present system, the Task Force reviewed prior day care studies and reports concerning the provision of child care in Maryland, and held a public hearing in Annapolis where parents, educators, and providers of care identified problems associated with the regulation of child care in Maryland. As a result of these activities, the Task Force made several recommendations for change in its interim report issued in December, 1985. (Rather than repeat the contents of that report in this document, this Report is attached as Appendix A.)

**Results of Interim Report Recommendations**

A major recommendation of the Task Force -- that an interagency council be formed to foster communication at both the programmatic and the policy-setting level -- was enacted into law with the signing of H.B. 1486 and S.B. 744. This assures the existence of a group to review all regulations concerning day care to assure coordination and consistency as well as to examine and resolve problems associated with the regulation of day care. The Council will be assisted by an advisory workgroup consisting of consumers, providers, and local officials concerned with the regulation of out-of-home care of children.

As noted in the interim report, in order for the Council to be effective, it must operate independently of any one State agency. For this reason, it is essential that a separate staff position be funded for the Council. We urge the three affected agencies to assist the Governor's Office in finding the resources for this independent staff position. Responsibilities of this staff position include:

- identifying gaps in current or proposed regulations and assuring that such gaps are addressed by one or more of the regulatory agencies;
- identifying barriers which current or proposed regulations pose to the development of child care and assuring that these barriers are eliminated;
- arranging meetings of the advisory workgroup;
- aiding in obtaining input from outside state government;
- aiding in facilitating access to the regulatory process by the general public;
- developing communications between the State and local subdivision day care coordinating groups.

The performance of these duties requires a full time staff person if the Council is to be able to make meaningful changes in the regulation of day care in this State. (See the proposed job description for such a staff person attached as Appendix B.)

There has also been progress in implementing certain recommendations concerning the Department of Health and Mental Hygiene. The DHMH has developed regulations concerning infant care, has invited extensive public comment, and will hopefully publish final regulations in this area before the end of this calendar year. The Department has obtained additional funding for positions to review existing day care regulations. The Task Force urges the Department to focus attention on the provision of training to local health department day care regulatory staff.

The Department of Human Resources has conducted a study of local family day care staff to assess their capacity to comply with family day care regulatory requirements. The Department found that increased workloads are straining local staff to the point where bi-annual visits and other requirements are, in some instances, barely being met because of insufficient staff. The Department intends to provide adequate staff to meet present requirements and to provide annual inspections in the future when there are sufficient local staff. In addition, as recommended in the Interim Report, the Department believes it can, under existing statutory authority, establish

training requirements for family day care providers. The DHR intends to continue training programs already in place and to expand the training opportunities for providers.

As recommended, the Maryland State Department of Education has obtained funding for a position to provide for accreditation of educational programs in group day care centers. This will enable day care centers which are capable of meeting standards for accreditation by MSDE to use the term "nursery school program" or "kindergarten program."

### **Priority Issues for Consideration by the Council and Workgroup**

The Task Force is pleased with the progress made in implementing its preliminary recommendations in the last few months. This is evidence of a commitment to children both by legislators and those in the Executive branch. There are, however, many issues to be resolved by the interagency council and the advisory workgroup. The following is a list of those issues the Task Force recommends for priority consideration. We have attempted to make specific suggestions where possible.

### **APPLICATION OF THE LIFE SAFETY CODE TO CHILD CARE PROGRAMS.**

Throughout the public hearing held by the Task Force, providers of care expressed concern about the inconsistent application of local zoning ordinances, building codes and the Life Safety Code to various forms of day care. While building and zoning requirements are within the province of local entities and may vary considerably between one county and the next, or even between one town and the next, the Life Safety Code applies throughout the State, and is administered in rural areas by State staff. (Baltimore City and several of the larger counties have local fire regulations in addition to the Life Safety Code, and the provisions of the Code are enforced by local personnel.) Because of the statewide applicability of the Code, there is an opportunity to foster consistency and clarity in the application of the Code to the various forms of child day care which exist in the State. We therefore recommend the following:

**That the Council ascertain the specific problems of local jurisdictions regarding the application of the Life Safety Code to local day care facilities.**

**That the Council meet on a periodic basis with a representative of the State Fire Marshal's Office to review issues regarding the application of the Code to day care facilities.**

That the Council work with the Fire Marshal's Office to develop a clear delineation of what sections of the Code are applicable to different child day care facilities, including family day care, group day care summer camps, child development centers and others.

That the Council encourage cooperation between local child day care licensing staff and inspectors for the Local Fire Marshal.

That the Council work as appropriate with the State Fire Marshal to assure uniformity and consistency of application of the Code in the various jurisdictions.

### COMPLAINT PROCEDURES

Specific complaints about child care programs are received by the regulatory agencies from parents and other concerned individuals. How the agency handles these complaints is of concern to the complainant and the caregiver, as well as to the referral service operating in the locality. The following concerns should be addressed in further detail and resolved by the Council.

Complaint procedures established by the three agencies should be clearly described in regulation.

Regulatory agencies communicate their procedures for handling complaints to the programs being regulated and to the general public by different methods. The complaint procedure used by local departments of social services is included in DHR regulations. The procedure used by the DHMH is in a "Circular Letter" dated 1978. It is important that both the licensees and parents who use the programs clearly understand the complaint process. Procedures contained in regulations are more readily available to caregivers and consumers.

The response of a regulatory agency should be commensurate with the seriousness of the complaint.

Complaints should be evaluated by the agencies using a combination of such factors as whether abuse or neglect is involved, whether the complainant is known or anonymous, whether the complaint is serious or minor, and whether it affects the entire group of children. It may be possible to resolve some complaints without an inspection. Others require an immediate inspection, and others might await investigation until the next routine inspection.

Agency regulations should permit the agency, in response to a complaint, to choose to consult with the caregiver, by phone or in person, prior to or instead of an inspection.

There are times when complaints may be used to harass the caregiver. The agency may be able to identify these complaints if they call the caregiver and discuss the problem. The complainant, for example, may be a parent who has failed to pay the fees and is being asked to take the child out of the program. This is one of the factors that could be weighed by the agency as discussed above.

There should be a procedure for notifying local child care referral services concerning caregivers who are under investigation following a serious complaint so that referrals can be suspended until the complaint is resolved.

A referral service may not know, for example, that a family day care home has been closed because the provider was caring for 12 children. During the entire investigation, referrals may have been made to that provider. Suspending referrals pending the outcome of such an investigation would best protect the children. It is, of course, necessary to assure that referrals are suspended only when there has been a serious complaint. The Council must define what is meant by a "referral service" that would be entitled to receive notice from a regulatory agency. In addition, it is necessary to assure that referral services only receive notice concerning those providers registered with them.

Agencies should establish timeframes during which an investigation must be completed.

Although it may be difficult to prove or disprove an allegation, an investigation that continues indefinitely may cause considerable harm to a child care program. If referrals have been suspended pending the outcome of the investigation, indefinite delay and failure to resolve the matter may affect the very existence of the program. At present, only the Family Day Care regulations require that complaints be resolved within 30 days.

The three agencies should have consistent policies concerning whether the record of complaints against a caregiver is public information.

It is our understanding that the file of inspection reports and complaints against a group day care center will be made available to a member of the public upon request. However, the file of a family day care provider is not made public. Inspection of the files is one way for a potential consumer to learn if there are any continuing deficiencies in the program. The Council should examine the applicability of the public information laws and develop a consistent approach.

Each agency should have a complaint procedure that is easy for parents to use.

A form for filing complaints in writing could be made available to parents when they select care. The Department of Human Resources publishes a booklet about family day care that includes a complaint form at the end. Consumers are in the child care program on a daily basis. If encouraged, they can assist regulators in assuring the existence of quality child care programs.

### ENFORCEMENT OF REGULATIONS

Enforcement should be direct, and permit intermediate sanctions.

At present, the only sanction permitted to be used against a child care program is suspension or revocation of a license. In part because of the severity of the sanction, revocation of a license is a lengthy process which is seldom used.

Penalties short of revocation might often be more effective. For example, the most frequent complaint in Montgomery County against family day care providers is that they are caring for more than two children under the age of two. The usual remedy is to give a provider 30 days to correct the violation. A few months later, the same provider may be in violation again. A fine of as little as \$25 for each violation might be a significant incentive to comply with the regulations.

The license or certificate should always be considered the property of the licensing agency that must be returned in the event of suspension or revocation.

At present, Family Day Care certificates may remain in a home even after suspension or revocation of a certificate. There is no way a parent knows that a certificate on the wall may have been suspended or even revoked before the expiration date on the face of the certificate.

There should be a clearly delineated procedure for the closing of a child care program that is operating without a license.

Although there is a procedure for the closing of a licensed or registered facility, the agencies have not established procedures for halting the operation of an unlicensed or unregistered facility.



The Council should consider methods of discouraging the advertising of unlicensed facilities.

In certain jurisdictions, newspapers may carry advertisements for registered providers under "child care" and unregistered programs under "babysitters" even though the care is provided outside of the child's home. It may be possible to require by regulation that licensed providers to publish their license number when they advertise. The Council should also consider other methods of encouraging newspapers to require license numbers from providers who advertise for out of home child care.

### REGULATORY APPROACH

Child care regulations should strike a balance between conveying the broad goals of the regulatory agency and specifying the details which serve as the basis for enforcement.

Regulations should reflect broad philosophical principals; they also need to provide adequate guidance so that providers can be aware of all requirements which may be imposed by state agencies. Under state law, any requirement that is to be enforced must be included in regulations; this provision frequently leads to inappropriate specificity and lack of focus on general issues.

The three Departments differ in the approach they use to regulation; some are more detailed than others. The Task Force believes that, although the content of regulations may vary for different child care settings, there should not be vast differences in the approach of the three Departments. Specific requirements should be presented within a general policy framework. Regulations should only be specific in those areas which are important enough to warrant enforcement action when providers are out of compliance.

The Council should examine the different approaches to regulation taken by the Departments and attempt to develop a common approach that can guide efforts to bring consistency to the regulatory process.

### DEVELOPMENT OF SCHOOL AGE REGULATIONS

The DHMH should give priority to the development of separate standards for school age child care programs.

Such programs are urgently needed; the lack of age-specific regulations has been a hindrance to the development of additional programs. Many of the current DHMH regulations were designed for programs serving two to six year old children; they are not applicable to the school age child. Separate age-appropriate regulations need to be promulgated.

While the Task Force considers the development of separate school age regulations to be a priority for the DHMH, it also recommends that regulations for small centers and infant care be separated from the general day care center regulations.

### PUBLIC INPUT.

The Council should develop guidelines to be used by each department to make providers and the general public more aware of proposed regulatory changes.

The requirements of the Administrative Procedures Act (APA) for public input into the regulatory process are inappropriate for this particular area of regulation. Child care is not a large profit-making industry. Many child care programs are a part of non-profit organizations; others are only marginally profitable. There is a shortage of adequate child care; quality programs find it increasingly difficult to survive. Any regulatory change has the potential of bringing financial disaster to a program. For this reason, regulatory changes should be made sparingly and only after serious consideration of the needs of consumers and providers. This can only be accomplished by means of public input at all stages of the regulatory process, not merely when regulations have already been developed and proposed in the Maryland Register.

The Council, in consultation with the advisory workgroup, should consider the following in developing recommended guidelines:

- the development of a timetable of proposed regulatory changes to be made available to providers;
- the development, in conjunction with consumer and provider groups, of a plan at the initial stage of a proposed regulatory change, of how the revision process will be handled, when the process will begin and how concerned persons can be involved in the process;
- establishment of an advisory committee at the time a department develops the first draft of changes;
- the holding of regional meetings (formal or informal) during the early stages of drafting regulatory changes;



the periodic distribution of informational bulletins to providers and advocacy groups, outlining the primary issues to be addressed and options for dealing with the issues.

As noted above, most providers are particularly concerned about those proposed changes which have a financial impact on their operations. The economic impact statement now required as part of the promulgation of regulations comes too late in the process and may not address indirect costs of regulatory changes. Open discussion between regulators, consumers and providers concerning costs versus programmatic benefits needs to take place from the beginning of the process.

### CHURCH OPERATED PRESCHOOLS.

The regulations of the Maryland State Department of Education provide as follows:

A school operated by a bona fide church organization is not required to be approved by the State Department of Education. However, such a school may apply for a certificate of approval, and, if approved, shall comply with these regulations. COMAR 13A.09.09.01C.

It is our understanding that a church operated preschool program will usually apply for an exemption from the requirements of the nonpublic school regulations. If it appears from the application that the church operated preschool is operating within hours normally considered appropriate for a preschool program, the exemption is granted. (If the program is operating for time periods usually considered appropriate for a day care center, the question of whether the program is actually a preschool program or a day care center, which must be licensed by the DHMH, will be considered.) If an exemption is granted by the MSDE, there is no guarantee that such a program has complied with any state or local requirements concerning health, safety, zoning, fire, or use and occupancy.

The Council and the MSDE should consider whether, under existing law and regulations, applicants for an exemption from regulation may be required to show compliance with use and occupancy requirements, fire and safety regulations, and building and zoning codes.

The Council and the advisory workgroup should document current practice with respect to church operated preschools and make recommendations concerning statutory or regulatory changes that may be required to afford health and safety protection to children in these programs.

We recommend that the issue be addressed by means of a task force which includes representatives of exempt and approved church operated preschool programs, interested umbrella organizations, local and state regulators, and members of the public. The deliberations of this task force should include a consideration of the relationship of any before and after school programs (which at present are required to be licensed by the DHMH) and church exempt preschool programs which may be operated by one entity in one facility.

## OTHER ISSUES REQUIRING PRIORITY CONSIDERATION

### Lack of availability of infant and before and after school care.

The Task Force gave high priority to the issues surrounding the lack of availability of infant and before and after school care, but with limited time and staff resources was unable to make recommendations to resolve these problems. The issues that require further consideration include:

- permitting more children in family day care if, for example, all the children are school age or if the provider is more highly qualified than the minimum;
- the potential for using small group centers to resolve the shortages of care for infants and school age children; and
- zoning problems surrounding residences caring for more than six children.

### Day care for the sick child.

The Task Force recognizes the serious problem posed by the child in regular day care who unexpectedly has a minor illness. By State regulation such ill children must be excluded from the day care setting. Parents, particularly single heads of household, are often hard pressed to find suitable alternatives to regular day care under these circumstances.

Other states are experimenting with "get well" rooms in regular day care centers, relaxed rules regarding the exclusion of sick children, special infirmaries shared by several centers and the use of designated minor illness beds associated with hospital pediatric services.

Some pediatric infectious disease experts take the view that it is not logical to exclude the child with a minor illness since communicability for viral infections is greatest during the one to three days prior to the appearance of symptoms.

Current trends in hospital utilization make this a particularly appropriate time to explore provision of sick child care. With an estimated 5,000 excess hospital beds in the State, and the existence of State policies for reducing that excess, hospitals are interested in exploring new types of services they

have not previously provided. Some hospitals have already expressed interest in the provision of sick child day care. The Council can encourage this interest by examining and promoting alternatives for providing this care.

The Task Force recommends that the Council consider the options for sick child care and make appropriate recommendations to the three departments.

## CONCLUSION

The Task Force is painfully aware that many of the "recommendations" contained in this report raise questions rather than provide solutions to problems. Unfortunately, the issues raised here only touch the surface of child care problems. Out of home child care is a complex area involving questions of health, safety, education, zoning, and other state and local codes. Fragmentation of responsibility between state agencies themselves and local agencies compounds the problems. It is our hope that the Interagency Council and the advisory workgroup can begin by addressing the priority issues raised in this report and make significant progress towards achieving the goals of consistent regulation of child care and the predictable enforcement of those regulations.